IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 1006 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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CHANDRIKABEN G. PANDYA - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DM AHUJA for the Applicant.
Ms. Nandini Joshi, Addl. PUBLIC PROSECUTOR for Respondent no.1.
MR PR NANAVATI for Respondent no.2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 11/08/2006

ORAL JUDGMENT

The present Revision Application has been preferred by the applicant against the order dated 21st November, 2005 below application exh. 37 (dated 14.11.2005) in Criminal case no. 1119 of 1997 passed by the learned Metropolitan Magistrate, Court no.11, Ahmedabad, whereby the application given by the applicant-original accused, was dismissed. In this application, certain allegations have been levelled against the original complainant-respondent no. 2 alleging that cheques which were dishonoured were not written by the applicant (original-accused) but, were stolen away and there are fabrication of documents as the

cheques have not been signed by the applicant. All these allegations have been levelled against the original complainant so that cross-case may be registered and investigation can be handed over to CID (Crime), Gandhinagar for the offences punishable under sections 193, 196, 379, 420, 467, 468, 478 and 471 of the Indian Penal Code. This application was given on 14th November, 2005 against the original complainant. This application was dismissed by the learned Metropolitan Magistrate, Court no.11, Ahmedabad. Hence, the present Revision Application has been preferred by the applicant-original accused.

2. I have heard the learned advocate for the applicant who has mainly submitted that the cheques which were dishonoured for which the respondent no.2 has filed the complaint in the year 1997 were stolen away and no such cheques were ever signed by the applicant and therefore, an application was given on 14th November, 2005 by the applicant for carrying out investigation by the CID (Crime), Gandhinagar for the offences stated hereinabove. The trial court has not properly appreciated that it is the duty vested in the trial court to carry out inquiry under the Code of Criminal Procedure. When definite allegations have been levelled against the

original complainant, the same ought to have been investigated by the trial court. This aspect of the matter has not been properly appreciated by the trial court and hence the impugned order passed by the trial court deserves to be quashed and set aside. It is also submitted by the learned counsel for the applicant that the trial court, by not entertaining the application exh. 37 has decided the case in favour of the original complainant. It is wrongly concluded by the trial court that looking to the provisions of section 195(1) of the Code of Criminal Procedure, no order can be passed below application exh. 37 and therefore also, the impugned order passed by the learned Metropolitan Magistrate, Court no.11, Ahmedabad deserves to be quashed and set aside.

3. I have heard the learned advocate for the respondent no.2-original complainant who has submitted that the complaint is of the year 1997. Thereafter, the applicant(original accused), instead of making payment, constantly, under one or the other pretext, filed different applications and getting orders from the trial court and is challenging before higher forums. Except giving applications, one by one and raising defences one by one, nothing much has been done by the

applicant(original accused). Initially, an application exh. 13 was given on 9th December, 1999, whereby the applicant had prayed that the court should file a complaint under section 340 of the Code of Criminal Procedure against the original complainant i.e. present respondent no. 2. Thereafter, application exh. 32 was given on 22nd December,2000 for getting the opinion of handwriting expert and thereafter, application exh. 36 is given on 14th November, 2005. Thus, every such type of application is a new defence and every order passed by the trial court has been made source for preferring appeals and Revision Applications. This is how criminal case no.1119 of 1997 has been prolonged by the applicant who is the accused. No reply of the statutory notice given under section 138 of the Negotiable Instruments Act, 1881 has been given by the present applicant. All the defences like theft of cheques, opinion of handwriting expert because they were never signed by the present applicant. The plea of examination of defence witnesses is nothing but an afterthought. Initially application exh. 13 was given in the year 1999, again application exh. 32 was given in the year 2000 and thereafter application exh. 36 in the year 2005. Several times, criminal Revision Applications have been preferred in the Sessions Court against various orders passed by

the learned Metropolitan Magistrate, Court no.11, Ahmedabad and matter have also come to this Court and therefore, ultimately, in Special Criminal Application no. 841 of 2003, a time bound schedule was given to the trial court for disposal of criminal case no.1119 of 1997. The said order was passed on 21st February, 2005 by this Court, whereby a direction was given to the trial court to dispose of criminal case preferably on or before 31st December, 2005. Thus, from February to December, 2005, time was given but looking to the nature of application exh. 36 given by the applicant at the fag end of the aforesaid time limit, that is on 14th November, 2005, that defence witnesses are to be examined by the applicant, from February 2005 to November, 2005, nothing was done by the applicant deliberately to cause delay so that criminal case may not be finally disposed of within time bound schedule given by this Court and therefore, the order passed by the trial court dismissing this application, also, is absolutely true and correct, legal and in consonance with facts of the case. No such application was given right from 1997. The complaint is filed in the year 1997. One of the defence witnesses, namely Vinodkumar P Joshi is already examined. Another defence whom the applicant wants to examine was the employee of the applicant. Despite he was an employee of

the applicant, she has failed to bring him before the trial court and therefore, the court had rightly given some time and thereafter,closed stage of examination of defence witnesses and therefore, the order passed by the trial court may not be interfered with by this Court. Moreover, it is submitted that the present application exh. 37 in criminal case no. 1119 of 1997 is nothing but an afterthought. Had the said cheques been stolen away, a complaint could have been filed by the applicant(accused). Never, ever before, such a complaint has been filed. All wisdom must have come in the mind of the present applicant after eight years of filing of th complaint by respondent no.2-complainant. Before filing criminal case no. 1119 of 1997, statutory notice was also given. Never it was pointed out in the reply of the statutory notice that cheques have been stolen away. In fact, the applicant is adopting delay tactics so that criminal complaint cannot be finally decided by the trial court. Every time, applications have been given by the applicant. Every time, the applicant invited orders so that those orders can be further carried in Revision before Sessions Court and upto this Court and therefore, much time has been consumed in disposing of the criminal complaint. Looking to the delay tactics adopted by the present applicant and looking to the nature of

applications and looking to the provisions of section 195(1) of the Code of Criminal Procedure and looking to the pendency of criminal case no.1119 of 1997, it is rightly concluded by the learned Metropolitan Magistrate that the application exh. 37 deserves to be dismissed. Straightaway the complaint cannot be sent to CID (Crime) for investigation. The applicant who is the original complainant of criminal case no.1119 of 1997 was never prevented or obstructed from filing of criminal complaint. After 1997, the application exh.37 has been preferred on 14th November, 2005 and therefore, rightly it has been not entertained by the learned Metropolitan Magistrate vide order dated 21st November, 2005 and hence this Court may not interfere in the Revision Application

4. Having heard the learned advocates for both the sides and looking to the facts and circumstances of the case, I am of the opinion that no error has been committed by the trial court in passing the order dated 21st November, 2005 below application exh. 37 in Criminal case no.1119 of 1997 for the following facts and reasons:

(i) Looking to the nature of the complaint which is of the year 1997, it appears that the present applicant is raising one by one pleas in her

defence. Though statutory notice was given under section 138 of the Negotiable Instruments Act, as cheques were dishonoured for want of sufficient funds, no reply was given by the present applicant. Initially, application exh. 13 was given on 9th December, 1999 and the trial Court was requested to take action under section 340 of the Code of Criminal Procedure. Though the present applicant was knowing that cheques have been stolen, the said complaint was never given by the applicant. Neither the said defence was ever raised by the applicant when the notice was given by the original complainant (respondent no.2). This application exh. 13 was dismissed by the learned Metropolitan Magistrate, Court no.11, Ahmedabad which order was further challenged by the applicant in Criminal Revision Application no. 172 of 2002 before City Sessions Court, Ahmedabad which was allowed by the City Sessions Court, against which the original complainant-respondent no. 2 preferred Special Criminal Application no. 841 of 2003 before this Court and the said Special Criminal Application has been finally disposed of by this Court by giving time bound schedule to the trial court for disposal of the criminal case. The order was passed on 21st

February, 2005 and the trial court was directed to dispose of criminal case on or before 31st December, 2005. Thus, the time bound schedule given by this Court which was known to the applicant. She waited till November, 2005 and gave an application exh.36 on 14th November, 2005 in the criminal case and gave names of two defence witnesses for examination. One was Vinodbhai P Joshi and another was Rajeshbhai Joshi. Though the said application was given at a very belated stage, the trial court entertained this application and issued summons and Vinodbhai Joshi was already examined as a defence witness. The summons to defence witness no.2 Rajubhai Joshi who was an employee of the applicant could not be served and therefore, time was sought for by the applicant. It was again granted by the trial court, but the applicant could not bring her employee as a defence witness. The court again granted one day's time. Again the applicant could not bring that defence witness before the court and therefore, rightly the trial court has closed the right of the applicant to examine defence witnesses. In view of the fact that criminal complaint is of the year 1997 and much time had elapsed after filing of the complaint. Over and above this, there was a

direction given by this Court in Special Criminal Application No. 841 of 2003 vide order dated 21st February, 2005 that the trial court has to finally decide the criminal case pending before it on or before 31st December, 2005. Keeping in mind these two factors, coupled with the fact that defences raised by the applicant one by one leisurely, which has caused much delay in the completion of the criminal complaint. Looking to the facts of the present case, the order passed by the trial court is absolutely true and correct.

(ii) It is also pointed out from the record of the case that initially exh. 13 dated 9.12.1999 was given by the applicant and it was requested that the trial court should take action under section 340 of the Code of Criminal Procedure. Thereafter, an application exh. 32 dated 22nd December, 2000 was given for hand writing expert's opinion and thereafter, an application exh. 36 dated 14.11.2005 was given for examination of defence witnesses. Thus, looking to the attitude of the present applicant, it appears that all these defences are raised one by one, initially in the year 1999 and thereafter, in the years 2000 and 2005 respectively,

which has caused much delay in final disposal of the criminal case under section 138 of the Negotiable Instruments Act. Enough is enough. From 1997 onwards, the case is going on in the trial court. No reply of the statutory notice issued by the respondent no.2-original complaint was ever given by the present applicant. Rightly therefore, the trial court has closed the stage of examination of defence witnesses.

(iii) Looking to the aforesaid nature of different types of applications with different types of defences, rightly it is concluded by the trial court that no further time should be given to such applicant and the matter ought to be finally argued out. During the course of the arguments, the learned advocate for the applicant also informed this Court that further application exhs. 40 and 44 have been given for adjournments and those applications have also been dismissed. Thereafter, for arguments, the matter was kept, but it was never argued out finally by the applicant and application exh. 45 was also given for adjournment for preparing the case for arguments. Some order has been passed below exh. 45 which is not challenged in this matter. Therefore, this Court is not much analysing the order dated 21st

December, 2005 below application exh. 45 passed by the trial court. Looking to these types of applications, one by one right from the year 1997 and various defences at much belated stage have been raised by the applicant and that too, without giving any reply to the statutory notice and keeping in mind time bound schedule given by this Court in Special Criminal Application no. 841 of 2003, I am of the opinion that the order dated 21st November, 2005 below application exh. 37 passed by the trial court are true and requires no interference by this Court.

(iv) Looking to the aforesaid nature of variety of applications, at the intervals of several years, one more application has been given at exh. 37. Initially, it was exh.13, thereafter exh. 32, thereafter exh.36 an now exh. 37. One by one, pleas have been raised by the present applicant so that criminal case of the year 1997 could not be finally decided by the learned Metropolitan Magistrate. The defences raised by the applicant were never given in the reply of the statutory notice, nor even the present applicant was prevented from filing the complaint on her own. She has deliberately not filed

any complaint from 1997 onwards. Every time, applications have been given like exhs. 13 under section 340of the Criminal Procedure Code. Thereafter, the present application exh. 37 has been given on 14.11.2005 alleging the same facts and for sending investigation straightaway to CID(Crime), Gandhinagar. This Court has observed while disposing of Criminal Revision Application no. 1004 of 2005 that the present applicant is not interested in the final disposal of criminal case no.1119 of 1997. Therefore, time bound schedule was given by this Court while disposing of Special Criminal Application no. 841 of 2003 on 21st February, 2005 on 21st February, 2005 for disposing of criminal case no.1119 of 1997 by the learned Metropolitan Magistrate, Ahmedabad on or before 31st December, 2005. The present applicant appeared in that petition knowing fully well final time limit of 31st December, 2005 which was fast approaching and the application exh. 37 was given on 14th November, 2005 that whatever defences are raised by the applicant in criminal case no.1119 of 1997, a separate complaint should be registered and a separate investigation ought to be carried out. Looking to the facts of the present case and the nature of the

application, it is rightly dismissed by the trial court. Nonetheless, the trial court has also discussed the provisions of section 195(1) of the Code of Criminal Procedure. Apart from that, even otherwise also, at much belated stage, this type of application ought not to have been entertained by this Court and therefore, this Court is of the opinion that there is no need of entertaining the present Revision Application. There is no substance in this Revision Application. Enough has been stated about the present applicant. Time bound schedule given by this Court could not be complied with because of the applications given by the present applicant, one by one and therefore, this Criminal Revision Application is dismissed. Notice is discharged. Interim relief, if any, stands disposed of. However, the learned Metropolitan Magistrate, Court no.11, Ahmedabad is hereby directed to dispose of criminal case no.1119 of 1997 as expeditiously as possible.

(D.N.Patel,J)

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